

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN RE HOOSICK FALLS PFOA CASES

This document relates to:

Bamrick, No. 1:19-cv-225;
Driscoll, No. 1:19-cv-231; *Gates*,
No. 1:19-cv-221; *Reece*, No. 1:19-
cv-219; *Slowey*, No. 1:19-cv-216;
Webber, No. 1:19-cv-220; and
Wyman, No. 1:19-cv-215

DECLARATION OF DAVID A. ENGEL, ESQ.

Pursuant to 28 U.S.C. §1746, I hereby declare as follows:

1. I am of counsel to the law firm of Nolan Heller Kauffman LLP (“NHK”).
2. NHK represents Diane Bamrick,¹ Mark Driscoll, Crystal Gates, Kathleen Reece, Ryan Slowey, Ian Webber,² and Lori Wyman in each of the above referenced cases, and as such I have personal knowledge of the matters set forth herein.
3. I submit this Declaration in opposition to Defendant Saint-Gobain Corporation’s (“Saint-Gobain”) Motion to Dismiss pursuant to Fed. R. Civ. Pro. 12(b)(2).
4. These actions were commenced by the electronic filing of Summonses and Complaints via the United States District Court, Northern District of New York, Electronic Filing System on February 16, 2019. Copies each of Plaintiffs’ respective Complaints are attached hereto as Exhibits “A”, “B”, “C”, “D”, “E”, “F”, and “G”.
5. Saint-Gobain Performance Plastics Corporation (“SGPP”) is a California Business Corporation with a principal place of business at 20 Moores Road, Malvern, Pennsylvania 19355.

¹ Mrs. Bamrick is suing both in her individual capacity and in her capacity as the Executrix of the Estate of Edward Bamrick.

² Mr. Webber is suing in his capacity as the Executor of the Estate of Sean Webber.

A copy of SGPP's filing with the New York State Department of State, Division of Corporations, is attached hereto as Exhibit "H".

6. SGPP was founded in 1979 as "The Fluorocarbon Company" before changing its name to "Furon Company" ("Furon") in 1990. In 2000 Furon changed its name again to form SGPP after its acquisition by the Saint-Gobain Group of Companies. (*See* Exhibit H).

7. Saint-Gobain is a Pennsylvania Domestic Business Corporation with a principal place of business at 20 Moores Road, Malvern, Pennsylvania 19355. A copy of Saint-Gobain's filing with the Pennsylvania Department of State is attached hereto as Exhibit "I".

8. Thomas Kinisky ("Mr. Kinisky") was the President and CEO of SGPP from January 2008 until January 2017, and the Chairman and CEO of SGPP from January 2008 until Present, per Mr. Kinisky's LinkedIn® profile. A copy of Mr. Kinisky's profile is attached hereto as Exhibit "J" (*available at*: <https://www.linkedin.com/in/tom-kinisky-7291429>).

9. On December 30, 2014, SGPP submitted a notice to the U.S. Environmental Protection Agency ("EPA"), pursuant to section 8(e) of the Toxic Substances Control Act ("TSCA 8(e)" or "Section 8(e)"). Section 8(e)³ requires that manufacturers, processors, and/or distributors of chemicals who "obtain[] information which supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment . . ." must disclose that information to EPA. A copy of SGPP's TSCA 8(e) notice dated December 30, 2014 ("Keller & Heckman TSCA 8e") is attached hereto as Exhibit "K".

³ Section 8(e) states that "Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information." 15 U.S.C. § 2607(e).

10. On November 17, 2015, SGPP submitted a second TSCA 8(e) notice to EPA. A copy of SGPP's TSCA 8(e) notice dated November 17, 2015 ("Archer & Greiner TSCA 8e") is attached hereto as Exhibit "L".

11. Both the Keller & Heckman TSCA 8e and the Archer & Greiner TSCA 8e notices state that "[i]f you have any questions regarding these findings or the information reported in this letter, please contact Lauren Alterman, Vice President Environment, Health & Safety for Saint-Gobain Corporation (parent of Saint-Gobain Performance Plastics Corporation)[.]"

12. Mr. Kinisky was the President and CEO of SGPP at the time that the PFOA contamination within the Village of Hoosick Falls came to light in, approximately, November 2014. In his role at SGPP Mr. Kinisky interacted extensively with stakeholders in the Village of Hoosick Falls. A copy of Mr. Kinisky's letter dated February 10, 2017 to Mayor David Borge is attached hereto as Exhibit "M".

13. SGPP also submitted a response to EPA's demand for information regarding the SGPP Facilities in Hoosick Falls under the provisions of Comprehensive Environmental Resources, Compensation, and Liability Act ("CERCLA") section 104(e). In that response, SGPP specifically identified Lauren Alterman, Vice President of Environment, Health & Safety of Saint-Gobain (not SGPP). A copy of SGPP's CERCLA 104(e) response is attached hereto as Exhibit "N".

14. Mr. Kinisky was appointed President and CEO of Saint-Gobain, per Mr. Kinisky's LinkedIn® profile, in January 2017 (*see* Exhibit J). Saint-Gobain officially announced Mr. Kinisky's appointment on May 1, 2017 via press release. A copy of the May 1, 2017 Press Release announcing Mr. Kinisky's appointment to the role of President and CEO of Saint-Gobain is attached as Exhibit "O" (*available at: [3](https://www.saint-gobain-</i></p></div><div data-bbox=)*

northamerica.com/company/newsroom/news-releases/thomas-kinisky-appointed-president-and-ceo-saint-gobain-corporation).⁴

15. In August 2017 and despite having been elevated from SGPP to Saint-Gobain, several months earlier, Mr. Kinisky continued to interact with the Mayor of Hoosick Falls on issues related to the PFOA contamination. A copy of Mr. Kinisky's Letter, dated August 28, 2017, to Hoosick Falls Mayor Robert Allen is attached hereto as Exhibit "Q".

16. On February 7 and 8, 2019, Phil Guy ("Mr. Guy") was deposed in relation to the PFOA Contamination in Hoosick Falls. Relevant excerpts from the deposition transcript of Mr. Guy are attached hereto as Exhibit "R".

17. On April 3, 2019, Steven Messmer ("Mr. Messmer") was produced as a witness, pursuant to Fed. R. Civ. Pro 30(b)(6) and deposed in relation to the PFOA Contamination in Hoosick Falls. Mr. Messmer is the Vice-President of Tax at Saint-Gobain. Relevant excerpts from the deposition transcript of Steven Messmer are attached hereto as Exhibit "S".

18. For all of the reasons stated in Plaintiffs' respective memoranda of law in opposition to Defendant Saint-Gobain's Motion to Dismiss pursuant to Fed. R. Civ. Pro. 12(b)(2), which are incorporated herein by reference, Saint-Gobain's motion should be dismissed.

19. I declare under penalty of perjury, that the foregoing is true and correct. Executed on this 18th day of July 2019.

/s/ David A. Engel

DAVID A. ENGEL

Bar Roll Number 105288

⁴ Mr. Kinisky currently sits on the Executive Committee of Compagnie de Saint-Gobain, the French parent company of both Saint-Gobain and SGPP. A printout of copy of Compagnie de Saint-Gobain's website which lists the members of its Executive Committee, is attached as Exhibit "P" (available at: <https://www.saint-gobain.com/en/group/corporate-governance/executive-committee>).